

July 23, 2013

Marlene H. Dortch Secretary Federal Communications Commission 445 Twelfth Street, SW Washington, DC 20554

## Re: Notice of Oral Ex Parte Presentation

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268;

Policies Regarding Mobile Spectrum Holdings, GN Docket No. 12-269

Dear Ms. Dortch:

On July 19, 2013, Michael Calabrese of the New America Foundation, Harold Feld of Public Knowledge, and Delara Derakhshani of Consumers Union met with staff from the Incentive Auction Task Force, the Wireless Telecommunications Bureau and the Office of Engineering and Technology, on behalf of the groups affiliated with the Public Interest Spectrum Coalition (PISC) that filed jointly in the proceedings referenced above.

With respect to the incentive auctions proceeding, the public interest representatives emphasized that the public interest is best served by band plan, auction and repacking policies that strike a balance between broadcast stations, licensed mobile operators and facilitating robust unlicensed nationwide. We acknowledged that although last year's Spectrum Act imposed certain statutory guideposts and constraints, we urged the Staff to be mindful of the general statutory obligations that apply to auction design and license assignments: First, Section 309(j)(3), by which Congress established that competition and innovation are primary auction objectives; and second, Section 309(j)(7), by which Congress explicitly prohibits basing a public interest finding on the expectation of federal revenue.

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<sup>&</sup>lt;sup>1</sup> The public interest (PISC) representatives met with Gary Epstein and Edward Smith of the Incentive Auctions Task Force; with Julie Knapp, Renee Gregory and Matthew Hussey of the Office of Engineering and Technology; and with Jim Schlichting, John Leibovitz, Tom Peters, Joel Tanbenblatt, Jennifer Temchin, Blaise Scinto, Chris Helzer, Paul Malmud and Madelaine Major or the Wireless Telecommunications Bureau.

We outlined the three primary policies identified in PISC's comments – and in the comments of the cable and WISP industries, among others – that we believe are essential to ensure a sufficient amount of unlicensed access (30 MHz or more) in *every* market necessary to promote and sustain markets of national scope and scale for unlicensed chips, devices and services:

- Designation of an unlicensed and *contiguous* duplex gap (and/or guard band) of at least 20 MHz.
- Preserving and opening the current two channels designated for wireless microphone
  reservations for shared unlicensed use and requiring microphones to rely first on out-ofmarket TV co-channels and use the reserved channels only when needed..
- The opening of Channel 37 for unlicensed access subject to TV Bands Database-enforced exclusion areas for astronomy and WMTS.

The public interest advocates reiterated their support for a generally uniform band plan that (at least in the case of an FDD band plan) ensures a contiguous duplex gap and optimizes – but is limited to – paired spectrum useful to competitive carriers. Market variation was never suggested during legislative process that authorized incentive auctions and should not undermine the viability of the unlicensed economy merely to create additional unpaired Supplemental Downlink (SDL) that would be useful only to the two dominant wireless carriers. The groups also noted that at a minimum there should be no unpaired FDD spectrum assigned below Channel 37. The groups did not express a position concerning a preference for TDD.

The PISC representatives also proposed that post-auction, large portions of 600 MHz band spectrum will remain unused in large portions of the country for many years – and many rural and small town areas may not be built out even at the end of the initial license term. PISC's comments therefore proposed that all new 600 MHz licenses should include a condition that permits unlicensed white space devices to operate on a localized basis until such time as the licensee notifies the Commission and a TVDB administrator that the licensee intends to commence service. This maintains the status quo, since under current rules unoccupied 600 MHz spectrum does not lie fallow but can be *used* for broadband services, subject to automatic protections for incumbents that is enforced by the TV Bands Database (TVDB). Licensees lose no rights whatsoever and bear a *de minimus* burden to simply inform the Commission and/or one TVDB administrator 30 days (or possibly more) prior to commencing substantial service in a particular local area, so that all unlicensed devices can be immediately denied permission to operate on that frequency band.

We noted that any concern about the inevitable disruption of temporary unlicensed use of a 600 MHz channel – when the licensee commences service – is unlikely (given the clarity of the rules) but in any case can be mitigated in at least two ways: First, by requiring a longer notice period (e.g., 90 days), during which the TVDBs can flag the channel and/or send notices that it will not be available after some future date. Second, by requiring that no licensed but

unoccupied white space channel can be utilized except by TV Bands Devices that have been certified to be multi-channel and frequency hopping, as all existing 802.22 equipment is currently, to our knowledge. This would eliminate the risk that a WISP or other unlicensed operation would rely solely on frequencies that will later be removed from the list of available channels for unlicensed use as mobile cellular licensees build out and commence service.

The public interest representatives further noted that repacking and relocation will have an enormous impact on the future of the unlicensed economy. We asserted that repacking should be carried out with a goal of optimizing the usefulness of vacant TV band spectrum for rural broadband and other higher-power applications, since under current rules it requires three consecutive White Space channels for WISPs to provide fixed wireless service. We reiterated our support for a proposal by the Wireless Internet Service Providers Association (WISPA) that would permit higher-powered operation on the middle six megahertz of two consecutive vacant TV White Space channels for fixed broadband operations, since this would accommodate a three megahertz guard band on each side of the higher-power broadband transmission.

The PISC representatives further recommended that the Commission adopt a policy of vigorously enforcing its rules to ensure that LPTV, translator and booster stations that are not entitled to interference protection also do not have protected status in the TV Bands Database. While many LPTV stations serve the public interest and enhance diversity, too many are not operating or occupying far more spectrum than needed for a single digital stream of content. We noted that PISC, in its comments, recommended that the Commission consider requiring secondary broadcast licensees to co-locate and share a single 6 MHz channel where feasible without reducing their free over-the-air broadcast service to the community.

Finally, with respect to 600 MHz auctions, the PISC representatives expressed their support for the adoption of a sub-1 GHz spectrum holdings limit a pre-auction rule of general applicability. Low frequency spectrum is uniquely valuable, particularly for entrants and competitive carriers, with an enormous foreclosure value to the two dominant carriers that already hold 80% of the available CMRS spectrum below 1 GHz. We urged completion of the general proceeding on aggregation limits prior to 600 MHz auction rules.

Respectfully submitted,

/s/

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